Comments To Docket No. FAA-2000-8431
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June 13, 2001

Subject: Past Drug and Alcohol Records
Comment:

Given past interpretations and confusion on the Permanent Disqualification From Service provision of the FAA Rule it is important that employers, employees and service agents/C/TPA's understand how the FAA intends to interpret 49 CFR 40.25's requirement as it applies to the FAA's Program. Notably missing from the NPRM is a discussion of the FAA's perspective on 49 CFR's 40.25's employer requirement to check on the drug and alcohol testing record of safety sensitive employees. Historically, and mainly by interpretation over time, the FAA has required covered employers to go back to at least September 10, 1994 or earlier in order to ensure that an employee had not been subject to permanent disqualification from service. Another purpose of the check was to confirm that any return to duty requirements were complied with if the covered employee had a positive drug or .040 or over alcohol test in the past.

What are the FAA's requirements effective August 1, 2001 on checking the drug and alcohol testing record of safety sensitive employees?

Subject: Proposal to eliminate the requirement for an entity seeking to operate a consortium to first seek the approval of the FAA.
Comment:

The FAA's proposal to eliminate the requirement for an entity seeking to operate as a consortium to first seek the approval of the FAA makes sense in that it assures conformity with 49 CFR Part 40. However, some of the FAA Rule's requirements make the change a little more complicated practically. The proposed change raises program implementation issues that have not been addressed in the NPRM. This makes it difficult to adequately respond to what could be a significant procedural change in the FAA Anti-Drug and Alcohol Misuse Prevention Program. Our comment is consequently an inquiry made in an attempt to understand the implications of the proposed procedural change.

It appears that the employer's plan requirement has not been eliminated and therefore is required. In the past, the approved Consortium's Plan became the Employer's Plan. Is it the FAA's intention for the C/TPA to be authorized to file the Anti-Drug and Alcohol Misuse Prevention Certification Statement on behalf of the employer? Would the Consortium's Plan and support materials continue to be authorized for use by the C/TPA's members? What are the ramifications of this proposed change to the employer's policy and program?

The Employer and the C/TPA providing the program need to know if the FAA proposes to change their relationship in its initial stages by this proposed change and to what extent. For aviation employers the FAA Consortium approval process assured a measure of initial scrutiny of the Consortium and has assisted the employer in its selection of a vendor for its program support services.

Is the FAA going to continue to require employers to file plans? If so, please consider the following thoughts.

1. Eliminating the "Approved" Consortium concept may well result in additional confusion and exposure to less than competent service providers for aviation employers. Time and experience have demonstrated the fact that, in many cases, aviation employers do not have the knowledge, time and personnel required to understand and implement an effective DOT/FAA Anti-Drug and Alcohol Misuse Prevention Program. Indeed, it can be challenging for a Consortium to persuade some aviation employers to implement the basic elements of the program even with extraordinary effort. For this reason, FAA approved consortiums; especially the more competent ones, have grown and filled a critical void.

   If the "approved" consortium system is eliminated, many aviation employers will find C/TPAs that are more than willing to accept their money. However, many of those C/TPAs may lack the necessary expertise and experience to competently assist these employers.

2. Is it the intent of the FAA to eliminate the requirement for aviation employers to file and receive approval of drug and alcohol program plans?

   Is it the intent of the FAA to continue to utilize the abbreviated "Plan"? If so, employers may simply file the plan without researching and implementing the detailed program required.

   If there is no requirement to file a plan, the first time the FAA would know an employer did, or did not, have a program would be when the program was inspected by the FAA. Although large Part 121, 135 and 145 operators are inspected frequently, there are thousands of smaller aviation employers that are inspected either infrequently or never.

   The regulation currently requires operators who contract out functions/work verify that their contractor has an approved FAA plan. Currently, at a minimum, the contracting entity receives some assurance through the "approved" plan process that the contractor or contractor has, at a minimum communicated with the FAA and is therefore subject to FAA inspection.

   If the abbreviated form is continued and the FAA continues to require aviation employers to verify that their contractors are in compliance with DOT/FAA rules, it may well cost aviation businesses significantly more money in the long run to comply with the requirement. How will a company verify that one of its contractors is in compliance? Will a copy of the abbreviated form be acceptable to FAA inspectors? Or, will the aviation employer be required to actually develop a process to "inspect" the contractor's program? Would this be accomplished by an on-site inspection, paper audit, or by some other procedure?

3. The majority of aviation businesses contract with a consortium for assistance in managing their FAA drug and alcohol-testing program. FAA approved consortiums have been de facto subject to FAA oversight and inspection in the past. Without the approval process, it will be all too easy for inexperienced and uninformed service agents, i.e., occupational health clinics, physicians, etc., to tell aviation employers "certainly, we can manage your drug testing program". This may occur even though the service agent has little to no understanding of the complexity of the FAA Rule and the high expectations of the FAA regarding its program and its implementation. This scenario is already a common practice. Without approved consortiums, more inexperienced and uninformed service agents will attempt to serve the aviation industry for only their business interests

and the situation will get worse. This does not seem to be in the best interest of aviation safety.

Subject: Administrative Matters
Comment:

The requirement that the MRO must forward all records to an employer within 10 days of the employer's date of notification of the new MRO's address has been and continues to be an unrealistic timeframe. On a large account, assembling and shipping all records in 10 days is not practical. A more appropriate timeframe would be 30 days.

Subject: Access to Records
Comment:

It would be practically impossible to ship all records kept by the Service Agent to the employer's offices for administrative review. Please review the practicable ramifications of this proposed requirement.

Also, Service Agents should be given a reasonable time period to assemble records for administrative review. Two weeks or thirty days advance notice would be more fair and reasonable.

Subject: The implications of 14 CFR Part 67 for the SAP.
Comment:

The SAP's duties are stated clearly in the NPRM's proposed language.